No. ———

In the

Supreme Court of the United States

OCTOBER TERM 1960

EX PARTE

JAMES PEARCE AND RAYMOND J. BEARE

BRIEF FOR RESPONDENT IN OPPOSITION

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No. 888

In the

Supreme Court of the United States

OCTOBER TERM 1960

EX PARTE

JAMES PIERCE AND RAYMOND J. BEALL

On Petition for Writ of Certiorari

to the

Supreme Court of Texas

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Petitioners attack the opinion of the Supreme Court of Texas rendered January 11, 1961, denying to them Writs of Habeas Corpus. The opinion is reported at *342 S. W. 2d 429*. Petitioners report all of the Trial Court's orders adjudging them in contempt but have omitted the written Orders of Commitment issued by the Clerk of the 114th Judicial District Court of Smith County, Texas. (Tr. pp. 86-112.) No attack is made here by Petitioners on the sufficiency of the Orders of Commitment.

JURISDICTION

This Court should not grant the Petition for Certiorari or assume jurisdiction because:

(a) The matters complained of in the Petition raise no new Federal questions and Petitioners' contentions have been foreclosed by the decisions of *Youngdahl v. Rainfair (1957), 355 U. S. 131, 2 L. ed. 2d 151, 78 S. Ct. 206,* and *United Automobile A. A. & A. I. W. v. Wisconsin Employment Relations Board (1955), 351 U. S. 266, 100 L. ed. 1162, 76 S. Ct. 794.*

(b) The Federal Labor Laws have not pre-empted the field over the matters complained of below since the methods used by Petitioners and others in conducting the strike were calculated to and did provoke violence, threats of violence and obstructed the free use of the streets adjacent to Respondent's place of business and the free ingress and egress to and from that property, over all of which conduct a State Court has discretionary power to enjoin.

(c) The trial court's adjudications of contempt for violation of a valid temporary restraining order, authorized by *Youngdahl* and *United Automobile*, supra, were affirmed by the Supreme Court of Texas, as amply supported by evidence of Petitioners' conduct in unreasonably delaying the entrances and exits of vehicles into and from Respondent's premises and the obstruction of traffic on State Highway 110 so as to create a menace and danger to the health and safety of the citizens of the State.

(d) Subsequent to the entry of the Judgments of Contempt and Orders of Commitment, Petitioners, acting by and

through their attorney of record, voluntarily paid the fines and court costs imposed on them by the Judgments of Contempt and their action in so doing renders moot the questions presented in the Petition.

STATUTES, CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

In addition to the matters contained in the Petition for Certiorari the relevant Texas Rules of Civil Procedure involved are Rules 680 and 683.

STATEMENT

The statement of the case made by Petitioners is grossly incorrect, misleading and does not present the true picture of the background out of which the orders complained of arose.

Based upon a background not only of threats of violence but acts of violence, coupled with actual physical obstruction by Petitioners to vehicles attempting to enter and leave Respondent's premises the trial court, upon proper Affidavit and Bond, issued the temporary restraining order on October 14, 1960, in accordance with the applicable procedural Rules of the State of Texas. (Pet. for Cert. A-1 to A-7.) The application for the temporary restraining order by Respondents was made necessary by reason of a series of violent acts, threats of violence, and serious interference with the free ingress and egress to Respondent's premises. The subsequent Show Cause Order in contempt came about as follows:

Respondent, General Electric Company, owns and operates a plant known and designated as General Electric Company

Air Conditioning Department, located about five miles from the City of Tyler, Texas. It has in its employ approximately 598 employees and approximately 330 of these employees are members of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, and Local 782 of said Union. Petitioner, Raymond J. Beall, is an employee of Respondent and is Chief Steward of Local 782 aforesaid. Petitioner, James Pierce, is a Labor Union Organizer and is the District Representative of the National Union. He is not an employee of Respondent.

At 12:01 o'clock A. M., Sunday, October 2, 1960, the Union put into effect a strike against Respondent Company and said strike continued until October 22, 1960. The Unions and their members, including Petitioners set up picketing procedures at the one automobile entrance into the Respondent's premises. For the first day or two the picketing was peaceable but, thereafter, and up until the time of the issuance of the temporary restraining order certain acts of violence were committed. Respondent charged in its original application for temporary restraining order that Petitioners and other pickets were obstructing the free ingress and egress of vehicles into and from the premises of Respondent; that they were deliberately placing vehicles upon State Highway 110 so as to constitute an obstacle to the free ingress and egress of Respondent's premises; that the pickets were at various times striking vehicles of employees desiring to work upon entering and leaving the Respondent's premises; the pickets were threatening violence against the Respondent and its employees and were provoking violence on the part of officers, agents and employees of Respondent and the

pickets were obstructing or attempting to obstruct the free use of the streets and highway adjacent to Respondent's premises. That certain home picketing had been carried on by them and specifically the homes of three non-striking employees, namely, Joseph Tench, Helen Hutson and James D. Thrasher. These homes were being picketed and the occupants of these homes were being harrassed, threatened and coerced; that Petitioners and other Defendants had, by telephonic communication, threatened, intimidated and coerced employees desiring to exercise their right to work: and that said Defendants by the use of threats of force or violence were attempting to prevent the Respondent's non-striking employees from engaging in a lawful vocation. (Tr. pp. 7-16.)

Respondent's application for a temporary restraining order,[1] effective until a hearing could be had thereon,[2] contained the other necessary allegations entitling it to injunctive relief, pending a hearing. (Tr. p. 12.) This application was properly sworn to by Tom Sproule, the Plant Manager of Respondent. The Honorable Connally McKay, Judge of the 114th Judicial District Court of Sr ith County, Texas, to

[1]Under Texas law temporary restraining orders, as distinguished from temporary injunctions, are authorized without notice upon verified petition, setting out facts showing grounds therefor. The order expires by its terms within a period of time not exceeding ten days unless for g d cause shown the time is extended or unless the party against whom the order is directed consents that it may be extended for a longer period. If a temporary restraining order is granted without notice the application for a temporary injunction is set down for hearing at the earliest possible date and takes precedence over all matters except older matters of the same character. Rule 680, Texas Rules of Civil Procedure.

[2]Upon the hearing as set by the Court in granting a temporary restraining order the Court may, if justified by the evidence presented by applicant, continue the restraint as a temporary injunction which remains in effect until a final hearing in the case at which time a permanent injunction may issue. No temporary injunction is issued without notice to the adverse party but temporary restraining orders may so issue without prior notice. Rules 680, 681, Texas Rules of Civil Procedure.

whom Respondent's application was submitted, entered a Fiat, enjoining and restraining Defendants, including Petitioners, from certain specific acts and conduct, conditioned that Respondent first file with the Clerk of the Court a bond in the sum of $5,000.00, payable and conditioned as required by law. (Tr. pp. 17-21.) This bond was properly executed by Respondent and filed prior to the issuance of the temporary restraining order. (Tr. p. 22.) Thereafter, Petitioner James Pierce was served with the temporary restraining order on October 16, 1960, and Petitioner Raymond J. Beall was served with a copy of the same on October 14, 1960. Petitioners admit notice and service of the temporary restraining order.

In connection with Respondent's claim of violence *prior* to the issuance of the temporary restraining order, Respondent informs the Court that on October 19, 1960, a striking employee-picket, Bobby Few, was charged in the County Court of Smith County, Texas, with the offense of willful destruction of personal property, such alleged offense having been committeed on October 5, 1960. Respondent further shows that on October 17, 1960, one L. W. Presley, a striking employee-picket, was charged in the same Court with the same offense, it being charged that such offense occurred on October 13, 1960. Petitioners will not deny the filing of these charges.

Other acts of violence and threatened violence were proved upon the hearing of the contempt matter. The picketing on the first day of the strike was peaceful. (S. F. p. 88.) But thereafter many incidents occurred on the picket line; Re-

spondent asked for police protection for the vehicles and persons attempting to enter and leave the plant. (S. F. p. 95.) Petitioners have incorrectly stated (Pet. for Cert. p. 11) that no one suggested that the picketing was being improperly conducted. Eleven or twelve State Highway Patrolmen were called to the scene. (S. F. p. 50.) These patrolmen parked along the State Highway from the plant entrance up to a quarter or one-half mile away. (S. F. p. 96.) Violence was observed at the picket line prior to the issuance of the temporary restraining order. Vehicles moving into the premises were struck by the pickets with the signs they carried. (S. F. p. 103.) A Red Ball Motor Freight Truck, seeking entrance to Respondent's Plant was struck with a picket sign with force sufficient to break the staff from the sign. The antennas of the vehicles carrying non-striking employees into and from the plant were struck. One picket attempted to ram his picket sign into the windshield of a vehicle entering the plant. (S. F. p. 103.) Cars entering and leaving the premises were scratched with the signs carried by the pickets. An outside rear view mirror was knocked off and smashed by a picket. (S. F. p. 104.) Thus, with the background of *violence, threats of violence and obstruction of the free ingress and egress* the temporary restraining order issued.

A hearing on Respondent's application for temporary injunction was set for Monday, October 24, 1960, at 10:00 o'clock A. M. Petitioners, having been served with the temporary restraining order and having consulted their counsel in connection therewith, committed the acts for which the contempt charges were brought on Monday, October 17, 1960.

The contempt charges were made returnable likewise on Monday, October 24, 1960, at 9:00 o'clock A. M., at which time all parties appeared and a hearing was had, resulting in the contempt judgments which Petitioners here attack. A hearing on Respondent's application for temporary injunction was not held as scheduled on October 24, 1960, because the strike was settled on Sunday, October 23, 1960, and Respondent's application for temporary injunction as well as Defendants' and Petitioners' Motion to Dissolve became moot. However, at the time of the contumacious conduct on the part of Petitioners the temporary restraining order was in full force and effect.

On Monday morning, October 17, 1960, the Unions had scheduled a giant rally on property belonging to them, located about 200 yards from Respondent's premises. This rally began at about 6:00 o'clock A. M. (S. F. p. 22.) One of the main speakers at this rally was Petitioner James Pierce, and while making a speech over a public address system at that time held up what he identified as the temporary restraining order which had been issued by Judge Connally McKay and he told the crowd there assembled that the restraining order was a "piece of trash." Petitioner James Pierce further told the crowd, over the public address system, that Judge McKay had been "bought and paid for by General Electric." (S. F. p. 25.) Petitioner Pierce also told the crowd on this occasion that in order to show them what he thought of the restraining order he was going up to Respondent's plant to take a "turn on the picket line." (S. F. p. 56.) Petitioner Raymond J. Beall also attended this rally

and made a speech. Thereafter, the Petitioners, Pierce and Beall, went to the picket line at the entrance of Respondent's premises and Pierce immediately took over one of the picket signs and committed the acts which Respondent charged constituted a violation of the temporary restraining order.[3] Later that day Petitioner Beall also walked the picket line and committed the acts which Respondent charged constituted a violation of the temporary restraining order.[4] The conduct of Petitioners in this regard is vividly and undisputedly shown by Respondent's Exhibit 11 offered in evidence in the trial court, which exhibit consists of approximately 1000 feet of moving pictures. These moving pictures, under order of the Supreme Court of Texas, have been transferred and are now at the disposal of this Honorable Court. It is Respondent's request that this Honorable Court view these moving pictures.

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[3]It was charged that Petitioner Pierce did on October 17, 1960, (1) unlawfuly obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas; (2) unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas; (3) obstruct and attempt to obstruct the free use of the streets and highways adjacent to the Company's place of business and he did obtruct the free ingress and egress to and from the Company's premises; and (4) unlawfully obstruct the traffic on State Highway 110 in front of the Company's premises so as to create a menace and danger to the health and safety of the citizens of this State traveling upon and using State Highway 110. (Tr. pp. 51-52.)

[4]It was charged that Petitioner Beall did on October 17, 1960, (1) unlawfully obstruct the free ingress and egress of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department, located on the Troup Highway, Smith County, Texas, being the premises now picketed; (2) unlawfully delay the entrances and exits of vehicles and persons into and from the premises of General Electric Company Air Conditioning Department located on the Troup Highway, Smith County, Texas; and (3) obstruct and attempt to obstruct the free use of the streets and highway adjacent to the Company's place of business and he did obstruct the free ingress and egress to and from the Company's premises. (Tr. pp. 46-47.)

The conduct of Petitioners on October 17, 1960, which is made the basis of the contempt charges is also shown by some of the testimony elicited upon the hearing:

HIGHWAY PATROLMAN BOB NOLAN (S. F. pp. 37-29):

"Q. Did you have an occasion to observe Mr. Pierce [Petitioner] there on that occasion?

"A. Yes, sir.

"Q. State whether or not he was one of the pickets that picketed the plant there at that time?

"A. Yes, he did.

"Q. Will you please describe to the Court the manner in which he picketed the place. as to whether or not any vehicles were obstructed? Their entrance into the plant?

"A. Yes, the vehicles were obstructed into the plant. They would walk their picket, and one car would go through, and they would walk across and the next car would have to stop and wait for the pickets to move before they could go through.

"Q. Did you observe the condition of the highway, Mr. Nolan, as to whether or not traffic backed up on that highway?

"A. Yes, it was.

"Q. Could you estimate for the Court about what number of vehicles were stacked up on that occasion, from time to time?

"A. The vehicles were over the little hill there and were out of sight. We could see approximately 30 or 40 cars in sight that were stacked up on the highway.

"Q. How long did Mr. Pierce continue to do that, if you recall?

"A. I would say thirty or forty minutes maybe.

"Q. On that occasion did you have to direct traffic yourself?

"A. Yes, sir.

"Q. Why?

"A. I was advised to by my superior officer.

"Q. And when you started directing traffic, what were you trying to do with reference to the vehicles on the highway?

"A. We were trying to stop the cars coming from Troup, coming—on the highway coming from Troup, to keep from maybe having an accident out there. That was our primary interest, to hold down the accidents."

(By Counsel Wells) (S. F. 41):

"Q. Then, as far as you have observed, everything out there has been peaceable?

"A. In what respect?

"Q. Well, in any respect.

"A. Everything *except the traffic*, yes."

(By Counsel Flock) (S. F. 45):

"Q. Did Mr. Pierce delay any of the traffic getting in that morning?

"A. Yes.

(By Counsel Wells) (S. F. 45):

"Q. How did he delay it?

"A. By walking in front of the cars."

HIGHWAY PATROLMAN TOM ARNOLD (S. F. pp. 58-60):

"Q. Did you see either or both of them [Petitioners] out there last Monday morning [October 17, 1960] on the picket line?

"A. Yes, sir.

"Q. Was any traffic stopped in front of the pickets?

"A. Yes, sir.

"Q. Please describe the condition of the highway as to whether or not there was any traffic blocked, etc.

"A. Yes, sir, the traffic coming from Tyler to the plant was blocked considerably. I was standing in the middle of the highway and cars were stacked up as far as I could see. I would estimate 25 or 30 cars, as far as I could see, and over the hill out of sight.

"Q. Did that occur while Mr. Pierce and Mr. Beall were doing the picketing?

"A. Yes, sir.

"Q. Did you have anything to do with trying to move the traffic inside?

"A. Yes, sir.

"Q. What did you do?

"A. Well, we attempted to move the traffic on into the plant.

"Q. Did you have any difficulty doing that?

"A. Yes, sir, the pickets still continued to walk in front of the cars."

(By Counsel Wells) (S. F. p. 63):

"Q. Did anything more than that happen? If it did, tell the Judge about it.

"A. Well, our main concern was the traffic problem, and the pickets walked so slow in front of the cars that it allowed the cars to stack up on the highway."

(By Counsel Flock) (S. F. p. 65):

"Q. Mr. Arnold, on this occasion, could you estimate in distance how far the traffic was backed up back towards Tyler that morning?

"A. No, sir, I couldn't see the back end of the line. As far as I could see, I would estimate 20 or 30 cars, something like that."

J. M. WINEMILLER (S. F. pp. 69-71):

"Q. Did you have occasion to see either or both [Petitioners] of those men last Monday morning, or on Monday, October 17, 1960?

"A. On Monday, yes, sir.

"Q. What did you see James Pierce doing, if anything?

"A. He walked the picket line the morning of the 17th.

"Q. Did you see Mr. Beall?

"A. I don't recall him in the morning, I do in the afternoon.

"Q. What did he do in the afternoon?

"A. Walked the picket line.

"Q. All right, did you observe if there was any difficulty of traffic entering or leaving the plant on that day?

"A. Yes, sir.

"Q. Was there?

"A. There was.

"Q. Did you observe the manner in which Mr. Pierce and Mr. Beall, whenever they walked the picket line on that day, the manner in which they did walk it?

"A. Yes, sir.

"Q. Will you please describe it to Judge McKay?

"A. Yes, sir. Judge, the two pickets, Mr. Beall and Mr. Pierce, walked the picket line in a very erratic manner, to my way of thinking, slowing at times, holding up traffic as a consequence. Going through certain gyrations. I recall distinctly Mr. Beall seemed to be having leg trouble at times. He would reach down

and rub his leg and then look over at the audience across the street and there would be applause more or less from there.

"Q. Now, when that was happening, where was he with reference to the traffic?

"A. He was in front of automobiles that were being held up, trying to leave in the afternoon—to leave the plant. Mr. Pierce, he also held up traffic. At one time, dropping his sign, as I recall it, right in front of one of the vehicles, reaching over slowly and picking it up; and also indicating it hurt his back, and holding like this, and again to the cheers from across the street—traffic being held up all of this time. They were among our slowest pickets, Judge.

"Q. Now, with reference to the amount of traffic held up, can you estimate for the Judge about how far up the highway, if it was up the highway, that traffic was held up?

"A. Yes, sir, I can. There was in the morning, of course, vehicles, a string of fifteen or more upon more than one occasion, which would—perhaps a quarter of a mile would be my best estimate.

"Q. Did you observe any traffic approaching from the cities of Troup and Whitehouse?

"A. Yes, sir.

"Q. State what the facts are as to whether or not any of that traffic was held up?

"A That traffic was held up on Monday, the 17th, in the morning also. It vanished behind the trees. I couldn't see how far down the road it went; but there were a number of vehicles held up.

"Q. Now, do you know whether or not those vehicles were intending to enter the plant of General Electric, or was that the general traveling public?

"A. I would say both.

"Q. Both. You saw that on that occasion?

"A. Yes. Some came in and some went on, when they could get through."

(By Counsel Wells) (S. F. p. 78):

"Q. And you saw that the Highway Patrolman had that traffic situation under control, didn't you?

"A. I wouldn't say he had it under control at all. No, sir.

"Q. In what respect did he not have it under control?

"A. May I describe it?

"Q. Sure.

"A. The Highway Patrolman entered the scene after the traffic had been slowed for many vehicles up the road. The Highway Patrolman came on the scene. Incidentally, we have motion pictures—and attempted to move the traffic in, as we could very well see— indicating, go here, go there, blowing the whistle we could hear. At the same time, the pickets would not move aside for the vehicles, and the vehicles were held up repeatedly, both before and after 8:00 A.M.

"Q. Now, did the Highway Patrolman ask a single picket to move?

"A. I cannot say if he did or did not. I was on the roof.

"Q. Did you see any pickets stop in front of the vhicles, or were they walking all the while?

"A. I saw pickets stop in front of the vehicles."

Petitioner Pierce deliberately and intentionally held up for approximately seven minutes the vehicle of witness Max

A. Williams who desired to enter Respondent's premises. (S. F. pp. 108-109.)

"Q. Please describe to the Court the manner in which they walked the picket line that afternoon?

"A. Mr. Pierce and Mr. Beall were walking from east to west. I believe you have it marked on your map there. Mr. Beall would step out in front of my car and walk from fender to fender, making it impossible for me to pass. And I sat and waited until I got a chance to pass between the pickets. Finally there was an opening. I started through, and Mr. Pierce politely bowed, and I nodded my head and passed through the picket line." (S. F. p. 111.)

LOIS BROWN (S. F. pp. 128-131):

"Q. Directing your attention, Mrs. Brown, to last Monday, October 17, 1960, do you recall coming to work that morning?

"A. Yes, sir.

"Q. Mrs. Brown, are you acquainted with, or do you know who this is? Mr. James Pierce?

"A. Yes.

"Q. Do you know Mr. Raymond Beall, the man there?

"A. Yes.

"Q. That morning, as you arrived, did you see James Pierce there at the entrance?

"A. Yes, sir.

"Q. What was he doing?

"A. He was picketing the entrance.

"Q. Picketing. Did you observe Mr. Pierce and the manner in which he was walking the picket line?

"A. Yes.

"Q. Please describe to the Court just what it was, just what he was doing?

"A. He was walking very slowly back and forth in front of my car.

"Q. Did he stop your car?

"A. Yes.

"Q. How long was your car stopped, there, if you recall?

"A. Two or three minutes.

"Q. And then while your car was stopped, what would Mr. Pierce be doing?

"A. Walking slowly in front of my car.

"Q. Miss Brown, I will ask you whether or not you left the plant that afternoon in your own vehicle?

"A. Yes, sir.

"Q. Did you notice Mr. Beall on that occasion?

"A. Yes, sir.

"Q. What was he doing?

"A. He was picketing real slow in front of my car.

"Q. Did he stop your car?

"A. Intentionally, yes.

"Q. All right.. Do you know how long you were stopped there?

"A. Three or four or five minutes, the maximum.

"Q. As you approached the gate to leave, did you want to go home?

"A. Yes, sir.

"Q. Did you leave the premises of General Electric?

"A. Yes, sir.

"Q. And what kept you from doing so immediately?

"A. I couldn't get out because of Ray Beall and Jim Pierce holding my car."

(By Counsel Wells) (S. F. pp. 136-137):

"Q. Oh, you have to do that. How many times did Jim Pierce walk in front of your car before you went through?

"A. I didn't count them.

"Q. I believe you testified, if I understand you, that at that time the traffic policeman was there, at the time you got up to where the picket was. Am I correct about that?

"A. I stopped and couldn't get through. The Highway Patrol walked up and let us go through."

Witness William Burk, a photographer, on October 17, 1960, took approximately 1,000 feet of movies clearly depicting Petitioners' conduct on the picket line. These movies, marked "Plaintiff's Exhibit 11" have been forwarded along with the record in this case and are now before this Court. Respondent requests that the Court observe these movies at 24 frames per second, the speed at which they were taken. (S. F. p. 147.)

THOMAS SPROULE (S. F. p. 170):

"Q. All right, sir, prior to the strike, and prior to October 2, 1960, what are the facts as to whether or not there was any difficulty in traffic entering and leaving your premises, or the premises of General Electric?

"A. To my knowledge, I have never seen it stack up. Of course, I did not observe it as closely as I have lately, but I don't recall anybody ever being held up the way we have been held up."

(S. F. pp. 171-173):

"Q. Will you describe what you observed there in anything that Jim Pierce would do by way of delaying traffic? On last Monday I am talking about now, October 17th.

"A. He walked in a very, very slow manner. Took very short steps.

"Q. At the time when he was on the picket line on last Monday, October 17th, did you observe if there was any stacked traffic?

"A. Yes, sir.

"Q. What are the facts as to whether or not there was?

"A. At certain times there was stacked traffic in both directions. Toward Troup I would estimate maybe six or seven cars at a time; and from the Tyler direction I counted up as high as 33 cars on one occasion.

"Q. Would those cars be stopped?

"A. Yes, sir.

"Q. Why would they be stopped?

"A. Because they were prevented from turning into the plant because of two reasons. One, there was traffic coming from Troup, and secondly and mainly, because the car in front of it could not get into the plant entrance, and could not block up this other lane of the highway until the Highway Patrolman came. Then, when he came, he motioned in and would block up the other lane of the highway and in turn that would put the jam-up coming from Troup, and it was a slow process as cars went in, so as to build up in both directions.

"Q. Did that condition exist while Jim Pierce was on the picket line?

"A. Yes, sir.

"Q. Referring to last Monday, October 17th, on which you stated the Highway Patrolman got out and actually directed traffic, was that the only instance you can think of when they actually got out and directed the traffic themselves?

"A. Yes, sir."

(By Counsel Flock). (S. F. p. 182.)

"Q. And were Mr. Pierce and Mr. Beall impeding the ingress and egress into and from the plant?

"A. In the afternoon, both of them were.

"Q. In the morning, was Mr. Pierce impeding the free ingress and egress into and from the plant?

"A. Yes, sir."

It was further shown that prior to the strike with 350 to 380 production employees quitting at 3:30 P.M. it took only seventeen minutes as the maximum for all of the vehicles to clear Respondent's premises. During the strike the maximum number of workers, including both hourly employees and office workers (only 46 of the production or hourly employees remained at their jobs after the strike began) was 283 and the time consumed was 40 minutes. This was true on Monday, October 17, 1960, the date of the alleged offenses. (S. F. pp. 304-306.)

Petitioners infer that Respondent did not open the second gate because such action would give the employees a second place to picket. (Pet. for Cert. p. 13.) The truth is that the second gate at no time *before* or *after* the strike had been opened for plant traffic. (S. F. p. 166.)

ARGUMENT

A. Pre-Emption.

Although Petitioners in the trial court first took the position that the Court was without jurisdiction to enter the temporary restraining order (Tr. p. 27), in subsequent argument before the Supreme Court of Texas, and now before this Court, Petitioners concede that the trial court had jurisdiction to enter the restraining order. (See Relator's Motion for Rehearing before the Supreme Court of Texas.) Petitioners further admit, as indeed they must, that the restraint as written by the trial court did *not* forbid peaceful picketing but now argue that the restraint as interpreted and applied in the Courts below prohibited "peaceful picketing." Thus, what Petitioners are saying is that their conduct in stacking up traffic on a State Highway for a quarter of a mile, intentionally and deliberately blocking the entrance to Respondent's plant, walking back and forth in front of, but not completely clearing vehicles seeking entrance to Respondent's premises, delaying ingress and egress into and out of Respondent's premises, all of such conduct being in direct violation of the trial court's restraining order, was "peaceful picketing," immune to State action. If such conduct is held to be "peaceful picketing" and, therefore, not subject to State proscription then no longer can a State exercise its historic power over such traditionally local matters as public safety and order, in the use of streets and highways. *Allen Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740, 86 L. Ed. 1154, 62 S. Ct. 820.*

The National Labor Relations Act, prior to its amendment by the Labor Management Relations Act, was held not to be designed to preclude a State from enacting legislation limited to the prohibition or regulation of mass picketing, threats to employees desiring to work, physical injury or property damage, obstruction of the place to work, physical injury or property damage, obstruction of the place to work, obstructing streets and public roads surrounding such place, and picketing the homes of employees. *Allen Bradley Local, U. E. R. N. W. v. Wisconsin Employment Relations Board*, supra.

Following the amendment of the National Labor Relations Act by the present Labor Management Relations Act this Court held in *United Automobile, A. & A. I. W. v. Wisconsin Employment Relations Board, 351 U. S. 266, 100 L. Ed. 1162, 76 S. Ct. 794*, that a State had power to enjoin violence in connection with conduct such as mass picketing, *interfering with the free and uninterrupted use of public ways*, preventing persons desiring to be employed by the employer from entering its plant, coercing employees who desire to work and threatening them and their families with physical injury. The *Allen Bradley* decision, supra, was held to be controlling.

The Court further held that the Labor Management Relations Act did not give the *exclusive* method of controlling violence since the State interest in law and order precludes such interpretation. Quoting from the opinion this Court stated:

> "As a general matter we have held that a State may not, in the furtherance of its public policy, enjoin

> conduct which has been made an unfair labor practice under Federal Statutes. But our post Taft-Hartley opinions have made it clear that this general rule does not take over from the States power to prevent mass picketing, violence and overt threats of violence. The *dominate interest of the State in preventing violence and property damage cannot be questioned. It is a matter of general local concern * * *. The States are the natural guardians of the public against violence. It is the local communities that suffer the most from the fear and loss occasioned by coercion and destruction. We should not interpret an Act of Congress to leave powerless to avert such emergencies without compelling directions to that effect.*

The temporary restraining order in this case and the judgments of contempt based thereon are clearly authorized by the settled law as stated in this Court's decision of *Youngdahl v. Rainfair, 355 U. S. 131, 2 L. Ed. 2d 15, 78 S. Ct. 206.* In that decision this Court upheld a State Court injunction enjoining strikers from "threatening, intimidating or coercing any of the officers, agents or employees at any place" and from "*obstructing or attempting to obstruct the free use of the streets adjacent to the employer's property and the free ingress and egress to and from the employer's property.*"[5]

It is clear from the record made below that the contumacious conduct of Petitioners in "taking a turn on the picket line" to show the crowd what they thought of the injunction described by Pierce as a "piece of trash" was not delay reasonably incident to peaceful picketing. Therefore, such conduct, being in direct violation of the trial

[5]Cf. Paragraph 6 of the restraint in the case at bar, quoted infra p. 26.

court's valid restraining order was punishable as for contempt.

B. Free Speech.

Picketing is, of course, an aspect of free speech protected by the First Amendment and withdrawn by the Fourteenth Amendment from encroachment by the States. However, picketing is something *more* than free speech; it is free speech plus. It is the plus factor that takes picketing out of the realm of free speech and subjects it to restructions. *Hughes v. Superior Court of California, 339 U. S. 460, 94 L. Ed. 985, 70 S. Ct. 718 (1950).*

In the case before the Court the plus factor that deprives Petitioners' picketing of its Constitutional protection is the resulting unreasonable obstruction of the free ingress and egress to Respondent's plant, rendering the use of the public streets and highway adjacent to Respondent's place of business dangerous to the health and safety of the citizens of the State of Texas. The trial court did not attempt to prohibit Petitioners from disseminating the facts of the labor dispute. All that were restrained were acts of violence and obstruction. The right to peacefully picket Respondent's plant was recognized and not proscribed.

Petitioners argue that to place restrictions upon their alleged right to obstruct free ingress and egress is to place undue limitation on the right to picket, thus depriving them of their Constitutional guaranty of free speech. Such argument ignores the fact that picketing which results in unreasonable obstruction of the free ingress and egress, impair-

ing the health and safety of the citizens of the State in thier use of the public ways is *not* the legal equivalent of free speech and is, therefor, not entitled to Constitutional protection. Thus it is the manner in which the picketing was conducted which gives ground for its disallowance. "The power and duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents cannot be doubted." *Thornhill v. Alabama, 310 U. S. 88, 84 L. ed. 1093, 60 S. Ct. 736 (1940).*

Petitioners rely on cases not applicable to the case at bar. In *Thornhill v. Alabama*, supra, the State, by Statute, sought to prohibit all picketing without regard to the type of picketing conducted. This Court held that such a Statute, which effectively prohibited all means usable in publicizing the facts of a labor dispute, violated the Constitutional guaranty of free speech and of the press. In *Cafeteria Employees v. Angelos, 320 U. S. 293, 88 L. ed. 58, 64 S. Ct. 126 (1943)*, the trial court enjoined the Petitioners in broad terms from picketing at or near Respondent's place of business. The restraint in effect banned all picketing. The picketing was admittedly peaceful, there being no evidence that the pickets tried to interfere with the rights of free ingress and egress into Respondent's premises, or that the highways or public ways were obstructed by the picketing. There is no factual similarity between the above two cases upon which Petitioners rely and the case at bar in that Petitioners themselves admit that the trial court did not attempt to ban picketing.[6]

[6]Petitioners, in their Petition, state as follows: "the restraining order by its terms does not ban picketing. It was admitted that picketing was not prohibited." (Pet. for Cert. p. 22.)

C. Due Process.

Petitioners argue that their violations of the trial court's restraining order may have been justified by alleged uncertainty as to the conduct restrained. Paragraph (6) of the restraining order forbade Petitioners from "threatening violence against Company and its employees and provoking violence on the part of the officers, agents and employees of Company, and from obstructing or attempting to obstruct the free use of the streets and highway adjacent to Company's place of business and obstructing the free ingress and egress to and from Company's premises." This language with clarity informed the Petitioners as to the conduct restrained and it was so held by the Supreme Court of Texas against attack by Petitioners as being too vague and indefinite as to give fair notice. That Court stated that, "Except for the use of the word 'unlawfully' the language used by the trial court is almost identical with that used in restraining similar conduct in *Youngdahl* and *United A. A. & A. I. W.*, supra, * * *. We interpret the trial court's use of the word 'unlawfully' as indicating that the conduct restrained was regarded by the court as being unlawful."[7] (Appendix to Pet. for Cert. p. A-52.) A plea of uncertainty or vagueness as a defense to prosecution for contempt is largely a matter of State law[8] since the Federal Constitution does not require the definitive resolution of collateral questions as a condition precedent to a valid contempt conviction. *Regan v. New York, 349 U. S.*

[7] Paragraph 6 of the restraining order, quoted above does not contain the word "unlawful" or "unlawfully."

[8] Rule 683, Texas Rules of Civil Procedure requires that every restraining order set forth the reasons for its issuance, be specific in its terms and describe in reasonable detail the acts sougth to be restrained.

58, 99 L. ed. 883, 75 S. Ct. 585 (1955). Assuming the Petitioners were in doubt as to the acts proscribed by the restraining order a decent respect for the authority of the Court dictated the propriety of an appeal to it for the solution of any doubt rather than violating the order through their own construction of the language. It is submitted that the degree of certainty and definiteness required by State law and the Federal Constitution is more than satisfied by the trial court's restraining order. It matters not that the Petitioners were left at their peril to guide their actions on the picket line in the light of what the trial court had restrained for even though "the law strives to provide predictability so that knowing men may wisely order their affairs; it cannot, however, remove all doubts as to the consequence of a course of action." *Regan v. New York*, supra.

This Court in *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, supra, did not question the definiteness or clarity of a restraining order enjoining and restraining Defendants from "obstructing or interfering in any way with entrance to and egress from the premises of Kohler Company" and from "obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways or private drives leading to the premises of the Kohler Company." And in *Youngdahl v. Rainfair* supra, this Court did not question the definiteness or the clarity of a restraining order enjoining or restraining the Defendants from "obstructing the free use of the streets adjacent to the employer's property."

D. Moot Question.

The Petitioners, after the contempt judgments were signed and orders of commitment issued and while in the custody of the Sheriff of Smith County, State of Texas, *through their attorneys of record voluntarily paid* the fines and court costs imposed upon them by the trial court. The Sheriff accepted the payments, gave Petitioners a receipt therefor and at no time requested or demanded that Petitioners or their attorney make such payment. (Supp. Tr. p. 11.) The Sheriff then, in his official capacity, turned the payment over to the District Clerk of Smith County, Texas. The District Clerk at no time requested or demanded that Petitioners, or their attorney, pay the fines or court costs. (Supp. Tr. p. 12.)

The action of Petitioners in voluntarily paying their fines has left nothing upon which a judgment of this Court can operate. It is well settled that this Honorable Court will not proceed to adjudication in such a case. *Ex Parte Baez, 177 U. S. 378, 44 L. ed. 813 (1900).* By satisfying the judgments of the trial court, insofar as payment of the costs and fines are concerned, Petitioners have recognized the finality of the judgments of contempt, and therefore, leave moot any legal questions involved.[9] "A Federal Court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of litigants before it." *St. Pierre v. U. S.,*

[9]The trial court imposed a $100.00 fine and a three-day jail term on Petitioner Pierce and $100.00 and a two-day jail term on Petitioner Beall. The fines have been paid, but the jail terms have not been completely served. However, the payment of the fines admits the finality and validity of the whole judgment and renders further proceedings purposeless and moot. *State v. Mass.*, 90 Kan. 129, 132 P. 1182 (1913); *People v. Pyrros*, 323 Mich., 329, 35 N. W. 2d 281 (1948); *Commonwealth v. Dixon*, 270 S. W. 2d 167 (Ky. Ct. App., 1954).

319 U. S. 41, 81 L. ed. 1199, 63 S. Ct. 910 (1943); accord, Bergdoll v. U. S., 279 F. 404 (3rd Cir., 1922). Petitioners should not now be heard to contend that the judgments have not been satisfied. It is inconsistent to yield a voluntary obedience to a judgment of a court and afterward appeal therefrom.

(All emphasis throughout this brief has been supplied by the writer.)

CONCLUSION

For the foregoing reasons, the Petition For Writ of Certiorari should be DENIED.

Respectfully submitted,

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